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SENATE BILL 171

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Sue Wilson Beffort

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

**RELATING TO TAXATION; CHANGING THE PENALTY THRESHOLD FOR
ESTIMATED PERSONAL INCOME TAX PAYMENTS; MAKING TECHNICAL
CORRECTIONS TO A SECTION OF THE CORPORATE INCOME AND FRANCHISE
TAX ACT; CREATING AN EXCEPTION TO THE WITHHOLDING REQUIREMENTS
OF THE OIL AND GAS PROCEEDS WITHHOLDING TAX ACT; PERMITTING THE
TAXATION AND REVENUE DEPARTMENT TO REQUIRE CERTAIN INFORMATION
FROM REMITTERS THAT DO NOT WITHHOLD PAYMENTS FROM CERTAIN
REMITTEES; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION
OF LAW IN LAWS 2003.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 7-2-12.2 NMSA 1978 (being Laws 1996,
Chapter 17, Section 1, as amended) is amended to read:**

**"7-2-12.2. ESTIMATED TAX DUE-- PAYMENT OF ESTIMATED
TAX-- PENALTY. --**

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1 A. Except as otherwise provided in this section,
2 [every] an individual who is required to file an income tax
3 return under the Income Tax Act shall pay the required annual
4 payment in installments through either withholding or estimated
5 tax payments.

6 B. For the purposes of this section:

7 (1) "required annual payment" means the lesser
8 of:

9 (a) ninety percent of the tax shown on
10 the return of the taxable year or, if no return is filed,
11 ninety percent of the tax for the taxable year; or

12 (b) one hundred percent of the tax shown
13 on the return for the preceding taxable year if the preceding
14 taxable year was a taxable year of twelve months and the
15 taxpayer filed a New Mexico tax return for that preceding
16 taxable year; and

17 (2) "tax" means the tax imposed under Section
18 7-2-3 NMSA 1978 less any amount allowed for applicable credits
19 and rebates provided by the Income Tax Act.

20 C. There shall be four required installments for
21 each taxable year. If a taxpayer is not liable for estimated
22 tax payments on March 31, but becomes liable for estimated tax
23 at some point after March 31, [he] the taxpayer must make
24 estimated tax payments as follows:

25 (1) if the taxpayer becomes required to pay

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1 estimated tax after March 31 and before June 1, fifty percent
2 of the required annual payment must be paid on or before June
3 15, twenty-five percent on September 15 and twenty-five percent
4 on or before January 15 of the following taxable year;

5 (2) if the taxpayer becomes required to pay
6 estimated tax after May 31, but before September 1, the
7 taxpayer must pay seventy-five percent of the required annual
8 payment on or before September 15 and twenty-five percent on or
9 before January 15 of the following taxable year; and

10 (3) if the taxpayer becomes required to pay
11 estimated tax after August 31, the taxpayer must pay one
12 hundred percent of the required annual payment on or before
13 January 15 of the following taxable year.

14 D. Except as otherwise provided in this section,
15 for taxpayers reporting on a calendar year basis, estimated
16 payments of the required annual payment are due on or before
17 April 15, June 15 and September 15 of the taxable year and
18 January 15 of the following taxable year. For taxpayers
19 reporting on a fiscal year other than a calendar year, the due
20 dates for the installments are the fifteenth day of the fourth,
21 sixth and ninth months of the fiscal year and the fifteenth day
22 of the first month following the fiscal year.

23 E. A rancher or farmer who expects to receive at
24 least two-thirds of [his] gross income for the taxable year
25 from ranching or farming, or who has received at least two-

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1 thirds of [~~his~~] gross income for the previous taxable year from
2 ranching or farming, may:

3 (1) pay the required annual payment for the
4 taxable year in one installment on or before January 15 of the
5 following taxable year; or

6 (2) on or before March 1 of the following
7 taxable year, file a return for the taxable year and pay in
8 full the amount computed on the return as payable.

9 [~~No~~] A penalty under Subsection G of this section shall
10 not be imposed unless the rancher or farmer underpays [~~his~~] the
11 tax by more than one-third. If a joint return is filed, a
12 rancher or farmer must consider [~~his or her~~] a spouse's gross
13 income in determining whether at least two-thirds of gross
14 income is from ranching or farming.

15 F. For the purposes of this section, the amount of
16 tax deducted and withheld with respect to a taxpayer under the
17 Withholding Tax Act shall be deemed a payment of estimated tax.
18 An equal part of the amount of withheld tax shall be deemed
19 paid on each due date for the applicable taxable year unless
20 the taxpayer establishes the dates on which all amounts were
21 actually withheld. In that case, the amounts withheld shall be
22 deemed payments of estimated tax on the dates on which the
23 amounts were actually withheld. The taxpayer may apply the
24 provisions of this subsection separately to wage withholding
25 and any other amounts withheld under the Withholding Tax Act.

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1 G. Except as otherwise provided in this section, in
2 the case of an underpayment of the required annual payment by a
3 taxpayer, there shall be added to the tax a penalty determined
4 by applying the rate specified in Subsection B of Section
5 7-1-67 NMSA 1978 to the amount of the underpayment for the
6 period of the underpayment, provided:

7 (1) the amount of the underpayment shall be
8 the excess of the amount of the required annual payment over
9 the amount, if any, paid on or before the due date for the
10 installment;

11 (2) the period of the underpayment runs from
12 the due date for the installment to whichever of the following
13 dates is earlier:

14 (a) the fifteenth day of the fourth
15 month following the close of the taxable year; or

16 (b) with respect to any portion of the
17 underpayment, the date on which the portion was paid; and

18 (3) a payment of estimated tax shall be
19 credited against unpaid or underpaid installments in the order
20 in which the installments are required to be paid.

21 H. ~~[No]~~ A penalty shall not be imposed ~~[under]~~
22 pursuant to Subsection G of this section for any taxable year
23 if:

24 (1) the difference between the following is
25 less than ~~[five hundred dollars (\$500)]~~ one thousand dollars

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1 (\$1,000):

2 (a) the tax shown on the return for the
3 taxable year or, when no return is filed, the tax for the
4 taxable year; and

5 (b) any amount withheld under the
6 provisions of the Withholding Tax Act for that taxpayer for
7 that taxable year;

8 (2) the ~~[individual's]~~ taxpayer's preceding
9 taxable year was a taxable year of twelve months, the
10 ~~[individual]~~ taxpayer did not have a tax liability for the
11 preceding taxable year and the ~~[individual]~~ taxpayer was a
12 resident of New Mexico for the entire taxable year;

13 (3) through either withholding or estimated
14 tax payments, the ~~[individual]~~ taxpayer paid the required
15 annual payment as defined in Subsection B of this section; or

16 (4) the secretary determines that the
17 underpayment was not due to fraud, negligence or disregard of
18 rules and regulations.

19 I. If on or before January 31 of the following
20 taxable year the taxpayer files a return for the taxable year
21 and pays in full the amount computed on the return as payable,
22 then ~~[no]~~ a penalty under Subsection G of this section shall
23 not be imposed on an underpayment of the fourth required
24 installment for the taxable year.

25 J. This section applies to taxable years of less

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1 than twelve months and to taxpayers reporting on a fiscal year
2 other than a calendar year in the manner determined by
3 regulation or instruction of the secretary.

4 K. Except as otherwise provided in Subsection L of
5 this section, this section applies to any estate or trust.

6 L. This section does not apply to any trust that is
7 subject to the tax imposed by Section 511 of the Internal
8 Revenue Code or that is a private foundation. For a taxable
9 year that ends before the date two years after the date of the
10 decedent's death, this section does not apply to:

11 (1) the estate of the decedent; or

12 (2) any trust all of which was treated under
13 Subpart E of Part I of Subchapter J of Chapter 1 of the
14 Internal Revenue Code as owned by the decedent and to which the
15 residue of the decedent's estate will pass under the decedent's
16 will or, if no will is admitted to probate, that is the trust
17 primarily responsible for paying debts, taxes and expenses of
18 administration.

19 M The provisions of this section do not apply to
20 first-year residents. "

21 Section 2. Section 7-2A-9.1 NMSA 1978 (being Laws 1986,
22 Chapter 5, Section 1, as amended by Laws 2003, Chapter 86,
23 Section 2 and by Laws 2003, Chapter 295, Section 1) is amended
24 to read:

25 "7-2A-9.1. ESTIMATED TAX DUE--PAYMENT OF ESTIMATED TAX--
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1 PENALTY- - EXEMPTION. - -

2 A. Every taxpayer shall pay estimated corporate
3 income tax to the state of New Mexico during its taxable year
4 if its tax after applicable credits is five thousand dollars
5 (\$5,000) or more in the current taxable year. A taxpayer to
6 which this section applies shall calculate estimated tax by one
7 of the following methods:

8 (1) estimating the amount of tax due, net of
9 any credits, for the current taxable year, provided that the
10 estimated amount is at least eighty percent of the amount
11 determined to be due for the taxable year;

12 (2) using as the estimate an amount equal to
13 one hundred percent of the tax due for the previous taxable
14 year, if the previous taxable year was a full twelve-month
15 year;

16 (3) using as the estimate an amount equal to
17 one hundred ten percent of the tax due for the taxable year
18 immediately preceding the previous taxable year, if the taxable
19 year immediately preceding the previous taxable year was a full
20 twelve-month year and the return for the previous taxable year
21 has not been filed and the extended due date for filing that
22 return has not occurred at the time the first installment is
23 due for the taxable year; or

24 (4) estimating the amount of tax due, net of
25 any credits, for each fiscal quarter of the current taxable

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1 year, provided that the estimated amount is at least eighty
2 percent of the amount determined to be due for that quarter.

3 B. If Subsection A of this section applies, the
4 amount of estimated tax shall be paid in installments as
5 provided in this subsection. Twenty-five percent of the
6 estimated tax calculated under Paragraph (1), (2) or (3) of
7 Subsection A of this section or one hundred percent of the
8 estimated tax calculated under Paragraph (4) of Subsection A of
9 this section is due on or before the following dates: the
10 fifteenth day of the fourth month of the taxable year, the
11 fifteenth day of the sixth month of the taxable year, the
12 fifteenth day of the ninth month of the taxable year and the
13 fifteenth day of the twelfth month of the taxable year.

14 Application of this subsection to a taxable year that is a
15 fractional part of a year shall be determined by regulation of
16 the secretary.

17 C. Every taxpayer to which Subsection A of this
18 section applies that fails to pay the estimated tax when due or
19 that makes estimated tax payments during the taxable year that
20 are less than the lesser of eighty percent of the income tax
21 imposed on the taxpayer under the Corporate Income and
22 Franchise Tax Act or the amount required by Paragraph (2), (3)
23 or (4) of Subsection A of this section shall be subject to the
24 interest and penalty provisions of Sections 7-1-67 and 7-1-69
25 NMSA 1978 on the underpayment.

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1 D. For purposes of this section, the amount of
2 underpayment shall be the excess of the amount of the
3 installment that would be required to be paid if the estimated
4 tax were equal to eighty percent of the tax shown on the return
5 for the taxable year or the amount required by Paragraph (2),
6 (3) or (4) of Subsection A of this section or, if no return was
7 filed, eighty percent of the tax for the taxable year for which
8 the estimated tax is due less the amount, if any, of the
9 installment paid on or before the last date prescribed for
10 payment.

11 E. For purposes of this section, the period of
12 underpayment shall run from the date the installment was
13 required to be paid to whichever of the following dates is
14 earlier:

15 (1) the fifteenth day of the third month
16 following the end of the taxable year; or

17 (2) with respect to any portion of the
18 underpayment, the date on which such portion is paid. For the
19 purposes of this paragraph, a payment of estimated tax on any
20 installment date shall be applied as a payment of any previous
21 underpayment only to the extent such payment exceeds the amount
22 of the installment determined under Subsection D of this
23 section due on such installment date.

24 F. For the purposes of this section, the amount of
25 tax deducted and withheld with respect to a taxpayer by a

1 remitter under the Oil and Gas Proceeds Withholding Tax Act
2 shall be deemed a payment of estimated tax. An equal amount of
3 the amount of withheld tax shall be deemed paid on each due
4 date for the applicable taxable year unless the taxpayer
5 establishes the dates on which all amounts were actually
6 withheld, in which case, the amounts withheld shall be deemed
7 payments of estimated tax on the dates on which the amounts
8 were actually withheld. "

9 Section 3. Section 7-3A-3 NMSA 1978 (being Laws 2003,
10 Chapter 86, Section 6) is amended to read:

11 "7-3A-3. WITHHOLDING FROM OIL AND GAS PROCEEDS. --

12 A. Except as otherwise provided in this section, a
13 remitter shall deduct and withhold from each payment of oil and
14 gas proceeds being made to a remittee an amount equal to the
15 rate specified in Subsection C of this section multiplied by
16 the gross amount that otherwise would have been payable to the
17 remittee.

18 B. The obligation to deduct and withhold from
19 payments as provided in Subsection A of this section does not
20 apply to payments that are made to:

21 (1) remittees with a New Mexico address as
22 shown on internal revenue service form 1099-MISC or successor
23 form;

24 (2) the United States, this state or any
25 agency, instrumentality or political subdivision of either;

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1 (3) any federally recognized Indian nation,
2 tribe or pueblo or any agency, instrumentality or political
3 subdivision thereof; [~~or~~]

4 (4) organizations that have been granted
5 exemption from the federal income tax by the United States
6 commissioner of internal revenue as organizations described in
7 Section 501(c)(3) of the United States Internal Revenue Code of
8 1986, as amended; or

9 (5) a remittee, that, in accordance with
10 department regulations and instructions, has agreed to pay
11 income or corporate income tax on the payments received.

12 C. The rate of withholding is six and three-fourths
13 percent for the period October 1, 2003 through December 31,
14 2004. Thereafter the rate shall be set by department
15 regulation; provided that the rate may not exceed the higher of
16 the maximum bracket rate set by Section 7-2-7 NMSA 1978 for the
17 taxable year or the maximum bracket rate set by Section 7-2A-5
18 NMSA 1978 for the taxable year; and provided further that
19 remitters shall be given ninety days' notice of a change in the
20 rate.

21 D. The department may require a remitter that does
22 not deduct and withhold an amount from a payment of oil and gas
23 proceeds pursuant to Paragraph 5 of Subsection B of this
24 section to report to the department annually:

25 (1) the name, address and federal tax

1 identification number of that remittee; and

2 (2) the total amount of oil and gas proceeds
3 paid by the remitter to the remittee.

4 ~~[D-]~~ E. If the amount to be withheld from a payment
5 to a remittee is less than ten dollars (\$10.00), no withholding
6 is required. "

7 Section 4. APPLICABILITY. -- The provisions of this act
8 apply to taxable years beginning on or after January 1, 2005.

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